IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMARY SUIT NO. 1735 OF 2005

Mr. Chenaji Narsingji & Ors. ... Plaintiffs.

V/s.

M/s. Shirpur Gold Refinery Ltd. ... Defendant.

....

Mr. R.D. Dave i/b. N.N. Vaishnavrao & Co. for the Plaintiffs.
Mr. N. Sahu i/b. S.K. Shrivastava & Co. for the Defendant.

CORAM : DR. D.Y.CHANDRACHUD,J.

03rd April 2007.

P.C. :

. By an order dated 20th February 2006, the Defendants were granted leave to defend the suit subject to a deposit of an amount of Rs.17,37,495/- within a period of 4 weeks. The order of the Court notes that the suit was filed for recovery of the aforesaid amount arising out of an agreement dated 15th August 2001. The only defence that was raised was that the dealings were with a proprietary concern whereas the suit was instituted by a partnership. The learned Single Judge noted that the second Plaintiff was the sole proprietor and

the Plaintiff had subsequently constituted a partnership firm at whose behalf the suit was maintainable. The Court is informed by Counsel that the order dated 20th February 2003 was not challenged in Appeal.

2. The Defendant has not complied with the condition subject to which leave to defend was granted. In these circumstances, the Plaintiff would be entitled to a decree as prayed under Order 37 of the Code of Civil Procedure. A compilation of the original documents has been placed on the record. The suit shall accordingly stand decreed in terms of prayer clause (a) with the modification that the plaintiff would be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until payment or realisation. Refund of Court fees if any, as per rules.